IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 343 (M/S) OF 2004.

**Harish Chandra Jaiswal, Son of Late Triloki Nath Jaiswal,
Resident of 10/3 Street Basant Vihar Enclave Post Office
F.R.I. Dehradun**

.....Petitioner.

Versus

1. **Chief Revenue Commissioner, Uttaranchal Dehradun.**
2. **Smt. Mamta Chopra wife of Sri Pradeep Kumar Chopra Resident of 426 Sector 7, Urban Estage Gurgaon through her power of Attorney Holder Sri Pradeep Kumar Chopra, R/o 426 Sector 7, Urban Estate Gurgaon.**
3. **Chaudhary Narendra Singh Son of Teg Singh, Resident of Kawali Pargana Kendriya Doon District Dehradun.**
4. **Gram Shabha Kawali through its Pradhan District Dehradun.**
5. **State of Uttaranchal through Collector Dehradun.**

.....Respondents.

**Mr. Sharad Sharma, learned counsel for the petitioner.
Sri V.K. Kohli, ld. Counsel for Respondent No.2.
Learned S.C. for the respondents No.1,3 & 4.**

Hon'ble Prafulla C. Pant, J.

1. By means of this petition, moved under Article 227 of the Constitution of India, the petitioner has prayed that the impugned order dated 31.3.2004, passed by the Additional Chief Revenue Commissioner, whereby third party respondent no.2 have been permitted to be impleaded at the second appellate stage, be set aside.

2. Brief facts of the case, as narrated in the petition, are that a suit no. 37 of 1997-98 was instituted by the petitioner under Section 229-B of U.P. Zamidari Abolition and Land Reforms Act, 1950, (for brevity hereinafter referred as Act) for declaration of his Bhoomidhari rights

over Khasra No. 433-M Area 0.13 Acre situated at village Mauja Kawali Pargana Kendriya Doon, District Dehradun, with the plea that the petitioner is in possession of the said land since the year 1984 and matured its Bhoomidhari title over the same. During the pendency of the said suit, an application under Order I Rule 10 of the Code of Civil Procedure, 1908, (hereinafter for brevity the Code) was moved by one Smt. Raj Kumari Jain for her impleadment on ground that she is the actual owner of the property in question. But her application was rejected on 16.5.2000. It is alleged in the present petition that Smt. Raj Kumari Jain claimed her title on the basis of the sale deed executed by Sri Narender Singh while in fact she got executed sale deed from Sri Pawan Singh son of Sri Narendra Singh. The suit of the petitioner was dismissed on 31.5.2000 by the Assistant Collector, against which he preferred an appeal No. Z.A.-73/1999-2000 before Commissioner Garhwal Mandal Pauri. However, the same was also dismissed on 22.2.2002. Aggrieved by the said order the petitioner has preferred second appeal before respondent no. 1 i.e. Chief Revenue Commissioner, which is registered as Z.A. Appeal No. 2/2001-2002, and is still pending. During the pendency of the said second appeal present respondent no.2 Smt. Meena Chopra moved an application under Order I Rule 10 of the Civil Procedure for her impleadment on the ground that she has purchased the land in question from one Sri Vijendra Singh through sale deed dated 12.6.2002. The said application was earlier rejected in default of the applicant (present respondent no.3) on 4.8.2003, where after she moved an application

dated 16.9.2003 for recalling of the order dated 4.8.2003. The petitioner had filed objection against application of impleadment and also against the application for recalling of the order. The Additional Chief Revenue Commissioner vide its order dated 31.3.2004 not only recalled the order dated 4.8.2003 but also permitted respondent no.2 to be impleaded in the appeal. Hence this petition on the grounds that the concerned authority has erred in law by permitting impleadment of Smt. Mamta Chopra at the appellate stage ignoring the fact that the application of Smt. Raj Kumari Jain from whom she derives title had failed to seek impleadment earlier.

3. A counter affidavit has been filed on behalf of the respondent no.2 Smt. Mamta Chopra in which she has stated that land owned by her bears Khasra No. 435-M measuring 0.12 Acres adjoining towards eastern side with the land of the petitioner, situated at Mauja Kawali, Pargana Central Doon District Dehradun. It is further stated in the counter affidavit that the said land is subject matter in question which has already been declared Abadi under Section 143 of the Act vide order dated 30th December 1998, passed by the Sub Divisional Officer, Dehradun. Respondent no. 2 has alleged that she has purchased the land from one Sri Vijendra Singh through registered sale deed dated 12.06.2002. It is further alleged by the respondent no.2 that Smt. Raj Kumari had earlier purchased this land from Sri Narendra Singh vide registered sale deed dated 5.12.1984. In the counter affidavit it is further stated that the petitioner had completed

adverse possession against Narender Singh though he had no concern with the land in dispute after 5.12.1984.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with annexures annexed thereto.

5. The short question for consideration before this court is whether the learned Additional Chief Revenue Commissioner has erred in law in allowing impleadment of respondent no.2 at the appellate stage of the case.

6. Learned counsel for the petitioner drew my attention of the principle of law laid down in ***Ramesh Heeranand Kundanmal Vs. Municipal Corporation of Greater Bombay & others 1993 Civil Court Cases 125 (S.C.)*** and submitted that mere fact that of fresh litigation can be avoided is no valid ground for impleadment of third party under Order I Rule 10 of the Code. I have gone through the said case law. The facts and circumstances of this case are quite different then that of the case referred. In the case of Ramesh Heeranand Kundanmal (Supra) the suit was for injunction. As such granting of relief would have affected only the defendants and not the third party who sought his impleadment, while in the present case the suit filed by the petitioner is under Section 229-B of the Act which relates to declaration of Bhoomidhari title over the land in suit. Certainly it is likely to affect the right of the party who is claiming her self to be the owner. As such the principle of law laid down in aforesaid case cannot be applied to this case in the circumstances.

7. Second contention made on behalf of the petitioner is that the learned Additional Chief Revenue Commissioner has erred by allowing the application of impleadment at the time of recalling of order dated 4.8.2003. In other words the petitioner's contention is that the respondent no. 1 after recalling the order dated 4.8.2003 should have fixed the case again for disposal of the application for impleadment (as said application was rejected in default on 4.8.2003). I agree with the contention to the extent that it would have been the proper course for the concerned authority that after recalling its earlier order by which the application was rejected in default, to fix a date for disposal of the said application. However, merely for that reason, in the opinion of this court the learned Additional Chief Revenue Commissioner has not committed material illegality as from the impugned order dated 31.3.2004 (Annexure-10) it appears that the petitioner was heard before the said order passed and the grounds for recalling got mixed up with the grounds for allowing the application for impleadment. From the perusal of Annexure-10 it is clear that learned Additional Chief Revenue Commissioner got guided by the fact that since Smt. Mamta Chopra (present respondent no.2), a third party to suit, was claiming her title through a registered sale deed in respect of land in suit as such she felt it just and proper to exercise the powers under Order I Rule 10 of the Code while recalling the earlier order whether the application for impleadment was rejected in default of the said third party.

8. Sri Sharad Sharma, learned counsel for the petitioner vehemently argued that the alleged sale deed was executed by Pawan Singh and not by Narender Singh in favour of Smt. Raj Kumari Jain whose impleadment was rejected at the trial court stage and the title of present respondent no.2 is derived from the said transfer in favour of Smt. Raj Kumari Jain (for which my attention was drawn to the copies of the deeds filed with counter affidavit). Developing his argument from the said fact learned counsel submitted that after rejection of Smt. Raj Kumari's impleadment at trial court stage, Smt. Mamta Chopra has no case of impleadment at the second appellate stage. However, this court feels that as far as Pawan Singh and Narender Singh are concerned they are not strangers, and Pawan Singh is admittedly son of Narender Singh. Secondly a new development had taken place after the application of Smt. Raj Kumari Jain was moved before trial court. The new development is the order of the Sub Divisional Officer passed under Section 143 of the Act for permitting change of user for non agricultural purposes in respect of the property in land in suit. The said fact is clear from the copy of Khatauni, annexed as annexure-3 to the counter affidavit, in which there is endorsement of the order dated 3.12.1999 of the of the Sub Divisional Officer. Said document also shows Smt. Raj Kumari Jain as Bhoomidhar of the land in question. Therefore in the circumstances of the case there appears no illegality if the respondent no.2 is allowed to be impleaded in view of the rights she has *prima facie* shown in respect of the land in question.

9. Lastly, on behalf of the petitioner's it is submitted that the plaintiff is a *dominus litis* and cannot be compelled to implead third party in the petition. In the opinion of this court the framers of Rule 10 of Order I of the Code were well aware of the status of the *dominus litis of* the plaintiffs. There are circumstances when the plaintiff may be compelled to implead the particular persons whose interests is likely to be directly affected in all probability if they were not impleaded as parties. Therefore in view of the principle of law that it is the duty of the court to see that proper and necessary parties be present before the court for final adjudication of the rights of the parties, the impugned order cannot be said to be illegal particularly when it was passed after hearing of the concerned parties including the plaintiff/petitioner.

10. In view of the above discussion the writ petition is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dated: 2nd December 2004.

P. Bandhavakar.